



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Melvin Combs
County Attorney
Jefferson County
Beaumont, Texas

Dear Sir:

Opinion No. 0-3036
Re: ~~Salaries of deputy tax~~
assessors of Jefferson
County.

Your request for opinion has been received and carefully considered by this department. We quote from your request as follows:

"I would like to have an opinion from your Department upon the following state of facts:

"W. T. Blackmon, who has just assumed the duties of County Tax Assessor-Collector of Jefferson County, has the following problem: He is employing E. J. Bernard as chief deputy, and A. B. Kelso as head of the automobile tax department. Both of these men served in the tax collector's department of Jefferson County for approximately nine continuous years, up to 1921. The question submitted by Mr. Blackmon to this department is, 'What is the maximum salary allowed these men under the statutes?'"

Section 5 of Article 3902, Vernon's Annotated Texas Civil Statutes, is applicable to Jefferson County, Texas, and reads as follows:

"5. In counties having a population of one hundred thousand and one (100,001) and not more than one hundred and fifty thousand (150,000) inhabitants, first assistant or chief

deputy not to exceed Twenty-six Hundred (\$2600.00) Dollars per annum; heads of departments may be allowed by the Commissioners' Court, when in their judgment such allowance is justified, the sum of Two Hundred (\$200.00) Dollars per annum in addition to the amount herein allowed, when such heads of departments sought to be appointed shall have previously served the county or political subdivision thereof for not less than two continuous years; other assistants, deputies or clerks not to exceed Twenty-three Hundred (\$2300.00) Dollars per annum each."

The main problem presented by the question submitted is whether the words "shall have previously served the county or political subdivision thereof for not less than two continuous years" should be construed to mean two continuous years next preceding the appointment, or any two continuous years preceding the appointment.

Where the statutory language is ambiguous or admits of more than one meaning, it is to be taken in such a sense as will conform to the scope and intent of the Act, and will best or most certainly accomplish its purpose without doing violence to plain statutory language. A construction that will unduly limit its plain purpose, will be avoided if possible. 39 Tex. Jur. pp. 218-219.

In permitting the payment of a larger salary to the head of a department who "shall have previously served the county or political subdivision thereof for not less than two continuous years," we believe the Legislature intended that a head of a department with previous experience in county matters should be entitled to a larger salary than an inexperienced person.

By requiring the previous service to be "not less than two continuous years" we believe the Legislature intended to set a minimum length of experience required to qualify an appointee to the additional salary, and to eliminate those persons whose previous service totaled two years but who were

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employed only periodically. It is a matter of common knowledge that certain officers of the county government, particularly the tax assessor-collector, require extra help during certain rush periods.

To construe the words in question as meaning two continuous years next preceding the appointment would be placing an undue limitation on the plain purpose of the statute. Such a construction would eliminate many able men with many years of continuous service. Such a construction would also present a serious question as to the length of time that an officer taking office on January 1, 1941, could wait before appointing the heads of the several departments without having the two continuous years next preceding the appointment interrupted sufficiently to make such proposed appointees ineligible to qualify for the additional salary. It would tend to penalize the officer who most carefully and deliberately attempted to appoint the best qualified persons. We cannot agree that the purpose of the statute in question justifies such a limited construction.

It is our opinion, therefore, that the words "shall have previously served the county or political subdivision thereof for not less than two continuous years," in Section 5 of Article 3902, supra, should be construed as meaning any two continuous years preceding the appointment.

You are, therefore, respectfully advised that it is the opinion of this department, under the facts stated, that the salary of the chief deputy cannot legally exceed the sum of \$2600.00 and that the salary of the other deputy, head of the automobile tax department, cannot legally exceed the sum of \$2500.00 per annum.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Edgar Pfeil
Assistant

EP:RS

APPROVED MAR 19, 1941
/s/ Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

This Opinion Considered and
Approved in Limited Conference